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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,702	12/11/2003	Michael A. Fetcenko	HS-115	8674
24963	7590	08/17/2006	EXAMINER	
ENERGY CONVERSION DEVICES, INC. 2956 WATERVIEW DRIVE ROCHESTER HILLS, MI 48309			NGUYEN, CAM N	
			ART UNIT	PAPER NUMBER
			1754	

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/733,702	FETCENKO ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Cam N. Nguyen	1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06/05/06 (an amendment/response).
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 27 is/are allowed.
- 6) Claim(s) 33 is/are rejected.
- 7) Claim(s) 21-26 and 28-34 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on originally filed is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date. _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### **Response to Amendment**

1. Applicants' amendment and remarks, filed June 05, 2006, has been made of record and entered. Claims 1-20 have been canceled. Claims 21-34 have been amended.

Claims 21-34 are currently pending and under consideration.

### **Claim Objections**

2. Claims 21-26 & 28-34 are objected to because of the following informalities:

- A. In claim 21, line 3, --two phase-- should be inserted before "microstructure".
- B. In claim 21, line 3, "including" should be changed to --comprising--.
- C. In claim 21, line 5, "including" should be changed to --comprising--.
- D. In claim 22, line 2, "includes" should be changed to --comprising--.
- E. In claim 23, line 2, "which ranges" should be changed to --ranging--.
- F. In claim 24, line 1, "claim 24" should be changed to --claim 23--?.
- G. In claim 24, line 2, "which ranges" should be changed to --ranging--.
- H. In claim 25, line 2, "which ranges" should be changed to --ranging--.
- I. In claim 26, line 2, "which ranges" should be changed to --ranging--.
- J. In claim 28, line 2, "is" should be changed to --of--.
- K. In claim 29, line 2, "is" should be changed to --of--.
- L. In claim 30, line 2, "is" should be changed to --of--.
- M. In claim 31, line 2, "is" should be changed to --of--.

N. In claim 32, line 1, "Mg-Ni composite material" should be changed to --hydrogen storage alloy--.

O. In claim 32, line 3-4, "Misch Metal and mixtures or alloys thereof" should be changed to --Misch metal, and mixtures thereof--.

P. In claim 33, line 2, --is—should be inserted before "selected".

Q. In claim 33, line 3, "Misch Metal and mixtures or alloys thereof" should be changed to --Misch metal, and mixtures thereof--.

R. In claim 33, line 4, "quantities totaling" should be changed to --a total amount of--.

S. In claim 33, line 5, "quantities" should be changed to --the amount of--.

T. In claim 34, line 6, "including" should be changed to --comprising--.

U. In claim 34, line 8, "to" after "attritor" should be deleted.

V. In claim 34, line 9, "accomplish" should be changed to --obtain a hydrogen storage alloy comprising--.

W. In claim 34, step (1), "form a powder" should be changed to --a powder formed--.

X. In claim 34, step (2), "form said" should be deleted.

Y. In claim 34, step (3), "produce" should be deleted.

Appropriate correction is required.

**Claim Rejections - 35 USC § 112 (Second Paragraph)**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “for all inclusions and each individual element is incorporated into said alloy in quantities less than about 3 atomic percent” does not clearly point out what applicants intend. Also, is this amount the same or differ from the amount of the metals incorporated into the alloy recited in the same claim?

**Response to Applicants' Arguments**

5. Applicants' amendment and remarks filed on June 05, 2006 has been considered, but not deemed persuasive in view of the new ground of rejection(s) and/or objection(s) above.

**Citations**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All references are cited for related art. See PTO-892 Form prepared attached.

**Conclusion**

7. Claims 21-34 are pending. Claims 21-26 & 28-34 are objected. Claim 33 is rejected. Claim 27 is allowed.

**Contacts**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cam N. Nguyen whose telephone number is 571-272-1357. The examiner can normally be reached on M-F, 9:00 AM – 6:30 PM, at alternative work site.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
CAM N. NGUYEN  
PRIMARY EXAMINER

Nguyen/cnn *Can*  
August 14, 2006

Art Unit: 1754